

1 IN THE UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION
4 SPANISH BROADCASTING SYSTEM INC.,)
5 Plaintiff,)
6 VS.) Case No.
7) 02-21755-CIV
8 CLEAR CHANNEL COMMUNICATIONS,)
9 INC., and HISPANIC BROADCASTING)
10 CORPORATION)

11 *****

12 VIDEOTAPED DEPOSITION OF
13 LOWRY MAYS

14 TAKEN JANUARY 22, 2003

15 *****

16 VIDEOTAPED DEPOSITION of LOWRY **MAYS**, produced as
17 a witness at the instance of the Plaintiffs, and duly
18 sworn, was taken in the above-styled and numbered
19 cause on the 22nd day of January, 2003, from 9:00 a.m.
20 to 4:50 p.m., before Christine Knepler, CSR, CRR in
21 and for the State of Texas, reported by machine
22 shorthand method, at the offices of Clear Channel
23 Communications, 200 East Basse Road, San Antonio,
24 Texas, pursuant to provisions stated on the record or
25 attached hereto.

1 Q And he's from San Antonio?

2 A Yes.

3 Q And have you had business dealings -- he's a
4 Clear Channel director.

5 A He is, and a cofounder of the company.

6 Q And he's also the owner of the Minnesota
7 Vikings?

8 A He is, among many other investments he has.

9 Q Do you -- and he's a shareholder of Clear
10 Channel, I take it?

11 A Yes.

12 Q Do you have any other -- do you have any
13 business dealings with Mr. McCombs other than your
14 common interest in Clear Channel?

15 A No. I don't think so.

16 Q And who is John Williams?

17 A John Williams is a retired investment
18 banker.

19 Q And is he a Clear Channel director?

20 A He is.

21 Q And the other -- the other two people who
22 you -- who Clear Channel put on the Heftel board in
23 August of 1996, Jim Raines and Ernesto Cruz?

24 A Uh-huh. Yes. Excuse me.

25 Q That's okay.

1 And who is Mr. Raines?

2 A He is a Local investment banker.

3 Q Local meaning San Antonio?

4 A San Antonio. He has, I think, a national
5 business. He's on the board of Waddell & Reed which
6 is a large investment advisory company, I believe.
7 I -- I think that's true. I'm not sure.

8 Q And what -- did you play a role in getting
9 Mr. Raines to join the Heftel board in 1996?

10 A I would say probably, yes.

11 Q Did you play --

12 A You know.

13 Q Did you play a role in the process of
14 selecting who would be on the board?

15 A Yes.

16 Q And as chairman and CEO of Clear Channel did
17 you have a -- pretty much the deciding voice in who
18 would be on the Heftel board?

19 A I wouldn't say so, no. We had -- we
20 discussed it at length at the -- at the board
21 meetings. We felt that it was important to have
22 independent directors, and those were recommendations.

23 Q So you would say it was the Clear Channel
24 board that decided who the -- who the board members of
25 Heftel would be in August of '96?

1 A I'm not sure exactly how that occurred. I
2 don't remember.

3 Q But --

4 A But certainly two of the members were board
5 members, so I'm sure we didn't have -- necessarily
6 have a vote on it. But everyone was aware that we had
7 acquired this interest in this publicly-held company
8 and that we needed to have a board of directors
9 that -- to move the company forward.

10 Q Would you agree that since that time, August
11 of 1996, that Clear Channel owned a majority of
12 interest in Heftel that no one could have been elected
13 to the Heftel board unless Clear Channel approved it?

14 A I would say so, yes, because our stock was
15 all voting stock.

16 Q What was your -- did Clear Channel have a
17 prior relationship with Mr. Raines?

18 A Mr. Raines had participated in a -- in
19 marketing our stock in public offerings. Yes. We had
20 a prior arrangement.

21 Q And since -- since August of 1996 has
22 Mr. Raines done any business with Clear Channel?

23 A I don't think so.

24 Q Is there any reason why Mr. Raines stopped
25 being involved in your public offerings?

1 A Well, I don't think we've done a public
2 offering since 1996.

3 Q Are you a friend of Mr. Raines?

4 A I would -- I don't see Mr. Raines often.
5 But, yes, I'd classify him as -- as a friend, as I
6 would all of the members on that board at that time.

7 Q Has he ever been to your house for dinner?

8 A He's been to my house for Christmas
9 receptions or that sort of thing in years past. But I
10 don't ever remember him being at my home for dinner.

11 Q Do you or other members of your family have
12 any other business dealings with Mr. Raines such as
13 managing, you know, personal investments?

14 A No.

15 Q How did it --

16 A I don't think so. I certainly don't.

17 Q How did Mr. Ernesto Cruz come to be selected
18 for the Heftel board in August of 1996?

19 A I think through the -- through a meeting
20 with CS First Boston, that being a Hispanic we thought
21 that he would be a good independent director. And
22 I -- and we invited him to come on the board and he
23 said yes.

24 Q When you said we thought, you mean the Clear
25 Channel board?

1 A Yeah.

2 Q And why was the fact that Mr. Cruz was
3 Hispanic of relevance to his going on the Heftel
4 board?

5 A It didn't have any real bearing that he was
6 Hispanic. It just was a factor in the consideration.

7 Q But was it a factor because Heftel broadcast
8 in the Spanish language?

9 A Not necessarily. We have diversity on our
10 board at -- at Clear Channel. It has -- I guess that
11 was certainly a benefit.

12 Q Do you have any Hispanics on your board at
13 Clear Channel?

14 A We don't, no.

15 Q Is there --

16 A We invited one that didn't -- that didn't
17 accept.

18 Q Is there a reason why a Hispanic would be
19 selected for the Heftel board rather than to the Clear
20 Channel board?

21 A No.

22 Q Have you ever considered inviting Mr. Cruz
23 to go on the Clear Channel board?

24 A No.

25 Q How did you know Mr. Cruz?

1 A Through our relationship with CS First
2 Boston.

3 Q What was the nature of Clear Channel's
4 relationship with CS First Boston?

5 A They were one of our investment bankers that
6 we saw often during the period of time from 1993 to
7 1996.

8 Q When you say they were one of your
9 investment bankers, had Clear Channel, prior to August
10 of 1996, paid fees to CS First Boston?

11 A They participated in our underwritings so
12 they were paid underwriting fees, like everyone else,
13 sure.

14 Q Has Clear Channel paid fees to CSF Boston
15 since August of 1996?

16 A Yes.

17 Q And --

18 A I think we just -- in fact, they just
19 participated in a public bond offering that we did
20 recently.

21 Q Have there been other occasions over the
22 period of time since August of 1996 in which CSFB has
23 been a -- been paid fees by Clear Channel?

24 A I don't think so. I don't know. I wouldn't
25 want to answer that.

1 Q In terms of the bond offer, how recently was
2 that?

3 A Just a couple of weeks ago.

4 Q Was -- do you know whether Mr. Cruz was
5 involved in that?

6 A No, he wasn't.

7 Q Who at First Boston was involved in that?

8 A Well, their bond desk. And I think he's in
9 the equity side of the business.

10 Q After -- what period of time would you say
11 this -- the negotiations occurred that led to the
12 tender offer and Clear Channel acquiring the majority
13 interest in Heftel?

14 A When we purchased -- when we made the deal
15 to purchase the family stock, and when the tender was
16 completed I don't know how long that was.

17 Q Was it -- did it occur in 1996?

18 A Yeah.

19 Q And at -- during the time that the
20 negotiations with the Heftel family and the tender
21 offer were ongoing, did Clear Channel give any
22 consideration to acquiring any other country --
23 company in the United States that engaged in
24 broadcasting on the radio in the Spanish language?

25 A Yes.

1 frame which certainly didn't have a very long life.

2 Q Now, at the -- at the time that you were
3 engaged in these discussions and negotiations with
4 Heftel family and the tender offer and Tichenor and
5 Oasis, did you also have any discussions with anyone
6 from Spanish Broadcasting?

7 A I'm not sure exactly what time frame but,
8 yes, we had discussions -- I had discussions with
9 Mr. Alarcon.

10 Q That's Raul Alarcon, Jr.?

11 A Yes. Uh-huh.

12 Q And how did -- how did it come to pass that
13 you had discussions with Mr. Alarcon?

14 A I'm not sure.

15 Q Had you ever met Mr. Alarcon before?

16 A No.

17 Q Had you -- had you ever -- prior to the
18 summer of 1996 had you ever heard of Mr. Alarcon?

19 A I've heard of him, yes, sure.

20 Q Were you -- were you aware of the existence
21 of SBS?

22 A Yes. Uh-huh.

23 Q Before you --

24 A I just didn't know him.

25 Q Before you -- you talked to Mr. Alarcon what

1 was your understanding of what SBS was?

2 A I really didn't know other than it was an
3 operator in the Spanish format in some -- in some
4 markets. I really didn't know anything about the
5 company.

6 Q Did you know that it was -- it was run by
7 people whose first language was Spanish?

8 A Whose first language was Spanish?

9 Q Yeah.

10 A Or --

11 Q Right.

12 A I'm not sure what you mean.

13 Q Well, did you know it was run by people who
14 were Cuban refugees?

15 A No.

16 Q Did you know it was run by people not born
17 in the United States?

18 A I don't remember.

19 MR. DWYER: I'd ask that the witness be
20 shown Exhibit 67 which is the July 11, 1996 Giddens to
21 Randall Mays memo.

22 Q Do you see from the upper right-hand corner
23 there's some handwriting that says CC, colon, MPM,
24 LLM?

25 A Uh-huh. Yes, I see that.

1 Q Did you --

2 A I don't remember receiving this but --

3 Q Okay. Did -- so you don't remember
4 receiving Exhibit 67?

5 A No.

6 Q Did you -- do you know someone named
7 Jason Shrinsky?

8 A Yes, I do.

9 Q And did you know Mr. Shrinsky prior to July
10 1996?

11 A Yes.

12 Q And how did you come to know Mr. Shrinsky?

13 A I had just known him as an FCC attorney and
14 as a -- as an acquaintance and friend.

15 Q Had **Mr.** Shrinsky represented Clear Channel
16 on any transactions prior to 19 -- July 1996?

17 A No.

18 Q But you -- you knew that he was an FCC
19 lawyer.

20 A Yes.

21 Q Did you have **a** view of his professional
22 abilities?

23 A I didn't have a view but I think he's very
24 competent.

25 Q Had you ever talked -- prior to meeting with

1 Mr. Alarcon for the first time had you ever talked to
2 Mr. Shrinsky about -- about SBS?

3 A I don't -- I don't remember. At some
4 juncture someone told me, after the Heftel investment
5 was made, that I should get to know Mr. Alarcon. I
6 don't know whether that was Mr. Shrinsky or not.

7 But shortly after that period then I
8 had discussions with Mr. Shrinsky. And one -- one day
9 he said, gee, I think, you know, Mr. Alarcon would
10 like to sell his company if you can come to Miami this
11 afternoon. So I went to Miami.

12 But there was something earlier, as I
13 remember, that I -- that I went and -- and had just a
14 get-to-know-him meeting, but it's very fuzzy in my
15 mind.

16 Q So there's three things in your answer that
17 I want to talk about those three events.

18 Let's start with the -- I take it the
19 earliest of the three events is the
20 get-to-know-each-other meeting you had with
21 Mr. Alarcon in Miami?

22 A I think so, yes. I seem to remember that I
23 went over there and we had dinner one night.

24 Q Do you remember where you had dinner?

25 A No.

1 Q Was anyone there besides you -- you and
2 Mr. Alarcon?

3 A I don't think so.

4 Q Do you remember what you said at the dinner?

5 A No. No.

6 Q Do you remember what he said at the dinner?

7 A No.

8 Q Did you talk about the possibility of doing
9 a business combination involving SBS?

10 A I don't know whether we did or not.
11 Certainly I wanted to get to know him because I had
12 never met him before.

13 Q What -- what -- there are a lot of people in
14 the radio business in the United States. Is that
15 correct?

16 A Yes.

17 Q So was there some particular reason why you
18 wanted to get to know Mr. Alarcon?

19 A Because we were broadcasting in the Spanish
20 format and he was broadcasting -- I had known that
21 much prior to that meeting and had gotten to know who
22 he was and -- and so I thought I'd like to meet him.

23 Q So when you say you were broadcasting in the
24 Spanish format, does that mean that this meeting took
25 place after Clear Channel acquired a majority interest

1 in Heftel?

2 A I'm not sure exactly when it did, but after
3 we -- certainly we purchased the 20 percent interest
4 but probably the -- the -- the majority interest. So
5 maybe it was in June or July. I don't know.

6 Q Did you -- did you come away with an
7 impression of Mr. Alarcon as a result of that dinner?

8 A Very positive. Yeah, I did.

9 Q You thought -- you thought highly of him?

10 A Yes. Uh-huh.

11 Q You thought that he would be -- have a
12 successful business in -- in Spanish-language radio
13 broadcasting?

14 A Yes.

15 Q Does that -- that turned out to be correct?

16 A Well, I don't know, you know. I can't
17 comment on that. But, you know.

18 Q What was it about him that led you to have a
19 positive view?

20 A Oh, I just generally have positive views of
21 most successful entrepreneurs, and I figured he had
22 been successful.

23 Q That's because you yourself are a successful
24 entrepreneur?

25 A I guess some people refer to me in that

1 vein.

2 Q Do you think of yourself in that vein?

3 A Not necessarily.

4 Q You think of yourself successful in
5 business?

6 A I think so.

7 Q It's the entrepreneur part that you're
8 struggling with?

9 A I'm not really struggling with anything.

10 Q And you said you had -- you had a
11 conversation with Mr. Shrinsky in which you said he
12 said if you'd like to buy SBS why don't you come to
13 Miami today? Do you remember that?

14 A Uh-huh. Yes, I do.

15 Q And that was after -- after the first dinner
16 meeting you had with Mr. Alarcon.

17 A Yes. It must have -- must have -- must have
18 been, if that meeting took place. And I feel -- I
19 feel like it did take place.

20 Q And it was before your second meeting with
21 Mr. Alarcon.

22 MR. SUSMAN: What? The Shrinsky?

23 Q The Shrinsky -- the Shrinsky conversation.

24 A The Shrinsky conversation -- I'm sure we
25 probably had some conversations about SBS. I don't

1 recall between myself and -- and Jason Shrinsky. But
2 I was, at that juncture, aware that he represented
3 Mr. Alarcon. And he called me one day and said, gee,
4 you know, if you would like to buy this company I
5 think we can make a deal if you come to Miami.

6 So it was at that juncture, however, we
7 were talking -- we were also talking with -- with the
8 Tichenor Media group. So I believe that Mac Tichenor
9 accompanied me on that trip.

10 Q So I take it you were reasonably far along
11 in your discussions with the Tichenor Media group if
12 you had Mac come along?

13 A Yes. Probably.

14 Q Did you -- you said that Mr. Shrinsky said
15 if you come here today you'll be able to buy it. Did
16 you -- did you come -- did you come the same day?

17 A I'm not sure whether I came the same day or
18 the next day. I'm not -- probably the next day.

19 Q But you came -- you came very quickly.

20 A Yes.

21 Q And --

22 A Only because Mr. Shrinsky said, you know, if
23 you come today I think, you know, Raul is ready to
24 make a deal, and so that's the reason for the meeting.

25 Q And I take it that -- and when you flew from

1 here in San Antonio to Miami?

2 A That's correct.

3 Q So I take it that you had an interest in
4 doing a deal as well.

5 A Well, certainly to -- to investigate the
6 deal. I mean I had -- I had very rough financial
7 appreciation of what the company was doing at that
8 time. But...

9 Q So you thought at some price it would be a
10 deal that you might be interested in.

11 A Yes.

12 Q And that -- without that you wouldn't have
13 flown to Miami.

14 A No.

15 Q And Mr. Tichenor, Mac Tichenor, Jr.,
16 accompanied you on that trip?

17 A He didn't accompany me but he made that same
18 meeting.

19 Q So he -- the meeting in Miami you were
20 there, Mac Tichenor, Jr. was there, Raul Alarcon Jr.
21 was there. Was anybody else there?

22 A His dad I met while I was there. I'm not
23 sure that he sat in on any meetings. But I think
24 certainly Mr. Shrinsky was there.

25 Q And -- but that's what you remember in terms

1 of people who were there?

2 A Yes.

3 Q Was the meeting -- where was the meeting?

4 A At his -- I believe it was at his offices.

5 Q How long did the meeting last?

6 A Not too long. Maybe an hour or two.

7 Q Did you -- did you bring any papers with
8 you?

9 A I don't think so. I don't know.

10 Q Did you -- what was the substance of the --
11 of the discussion you had at that meeting?

12 A Well, the substance of the meeting was that
13 Mr. Alarcon, Jr. said that -- that he would be happy
14 to sell us his company for a billion dollars. And
15 that pretty much ended the meeting.

16 And I believe I remember Mr. Shrinsky
17 saying, gee, I'm sorry you came over here because I
18 didn't, you know, know that he would, you know, put
19 that kind of price tag on his company. I'm sorry I
20 made the call, sorry you wasted your time. And, you
21 know -- and it was a total waste of time.

22 Q Is there -- in doing -- in doing
23 acquisitions of radio stations or radio station
24 companies would you agree that there are companies
25 that you'd be interested in at the right price but not

1 at the wrong price?

2 A Yes.

3 Q And is there some reason why you -- before
4 going -- before flying from San Antonio to Miami you
5 didn't find out from Mr. Shrinsky what range price --

6 A Mr. Shrinsky felt that -- that the price
7 would be in line with -- with a reasonable amount that
8 would attract us to make -- be interested.

9 Q Did you and Mr. Shrinsky talk about what
10 would be a reasonable price to attract your interest?

11 A No.

12 Q Had you thought about what would be -- what
13 would have been a reasonable price to have attracted
14 your interest in buying SBS at that time?

15 A I think so. I'm sure I probably did.

16 Q What was that?

17 A I don't remember what it was, but
18 substantially -- you know, I don't know if it was half
19 or what -- substantially less than the price he put on
20 it.

21 Q Well, would you say about half?

22 A I wouldn't -- I don't remember.

23 Q Would you say more --

24 A Maybe less than half.

25 Q Would you say more than 300 million?

1 A I don't remember.

2 Q Had you talked to Mr. Tichenor before you
3 met with Mr. Alarcon and Mr. Shrinsky in Miami about
4 whether this would be a desirable investment?

5 A I think, yes, that we felt that it would be
6 an attractive investment at the right price, yes.
7 That's the reason we went.

8 Q What was attractive about the investment,
9 assuming that the price was right?

10 A What was attractive about it was that there
11 was more concentration in that specific format that
12 created more economies of scale for a company
13 specializing in that format.

14 Q So your interest -- your interest in SBS was
15 that you were -- since you were -- had already
16 achieved control of Heftel and you were well along
17 towards acquiring Tichenor Media and putting it
18 together with Heftel, that acquiring another company
19 that had a Spanish-language format and putting it
20 together with Tichenor Media and Heftel would be a
21 good business plan?

22 A Yes. Uh-huh.

23 Q And if -- if SBS had not been broadcasting
24 in Spanish you wouldn't have had any interest **in**
25 simply buying those stations and putting it together

1 with Tichenor Media and Heftel.

2 A Probably not.

3 MR. DWYER: Could I have the witness
4 shown what was previously marked as Exhibit 97, which
5 is the August 15th, 1996 memo from Mac Tichenor to
6 Lowry, Mark, and Randall Mays?

7 Q Have you seen Exhibit 97 before either --

8 A I don't remember seeing this.

9 Q -- either with -- either with or without the
10 handwriting?

11 A Uh-huh. I don't remember seeing it. That
12 doesn't mean I didn't see it, certainly.

13 Q In the -- in the third paragraph it talks
14 about Mr. Tichenor talks about having set a meeting
15 with Mr. Alarcon in New York on August 22nd, 1996
16 subject to Lowry being available.

17 Did you ever attend a meeting in
18 New York with Mr. Alarcon in 1996?

19 A I don't remember that I did, no.

20 Q Do you think --

21 A That doesn't mean I didn't, but I just don't
22 remember that I did.

23 Q Do you think that the meeting in Miami
24 occurred before or after this time, this time being
25 August 15th, 1996?

1 A I think it must have occurred before, but
2 I'm not sure.

3 Q Did -- in the handwritten note number one
4 near the bottom of the page there's a -- there's a
5 price there that talks about \$350 million.

6 Does that refresh your recollection as
7 to what price range you were -- you were thinking
8 about paying for SBS at that time?

9 A It must -- must have been in that range so
10 that would mean that the billion dollars was three
11 times the price referred to here.

12 Q Okay. You can put that document aside.

13 During the --

14 A It also says we have no financials.

15 Q Why was -- actually it says you have -- does
16 it say you have no financials or no station
17 financials?

18 A I don't know what that means.

19 Q Is having financials something you would
20 have before you did any acquisition?

21 A Of course.

22 Q And that's because you would look at what
23 kind of return you could get on your investment.

24 A Yes.

25 Q Now, when you would look at station -- or